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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

In re MGM MIRAGE SECURITIES
LITIGATION

CASE NO. 2:09-cv-01558-GMN-LRL

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MGM'S MOTION TO
DISMISS**

Judge: Hon. Gloria N. Navarro

REQUEST FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, defendant MGM Resorts International (“MGM”) respectfully requests that the Court take judicial notice of the documents filed herewith as Exhibits 1-21 to this request.

Federal Rule of Evidence 201 authorizes federal courts to take judicial notice of documents that are “not subject to reasonable dispute [and] . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201. MGM seeks judicial notice of two categories of documents that meet the Rule 201 standard: (1) documents filed by MGM with the SEC and (2) historical stock price information.

MGM seeks judicial notice of its 2007 and 2008 Proxy Statement, its 2007 Annual Report filed on Form 10-K, and certain Form 4s, which evidence the sale of MGM stock by Mr. Robert Baldwin. All of these documents have been publicly filed with the SEC. Courts within the Ninth Circuit frequently take judicial notice of documents filed with the SEC, including proxy statements, Form 10-Ks, and Form 4s, when deciding a motion to dismiss. *See Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008) (judicial notice of SEC filings is appropriate on motion to dismiss); *McCasland v. FormFactor Inc.*, No. C 07-5545 SI, 2008 WL 2951275, at *10 n.23 (N.D. Cal. July 25, 2008) (taking judicial notice of proxy statements and Form 4s in securities fraud action); *In re Amgen Inc. Sec. Litig.*, 544 F. Supp. 2d 1009, 1024 (C.D. Cal. 2008) (taking judicial notice of proxy statement and Form 4s); *Glenbrook Capital Ltd. P’Ship v. Kuo*, 525 F. Supp. 2d 1130, 1137 (N.D. Cal. 2007) (taking judicial notice of Form 10-K); *In re Petco Animal Supplies Inc. Sec. Litig.*, No. 05-CV-0823-H (RBB), 2005 WL 5957816, at *2 (S.D. Cal. Aug. 1, 2005) (taking judicial notice of Form 4s); *Plevy v. Haggerty*, 38 F. Supp. 2d 816, 821 (C.D. Cal. 1998) (taking judicial notice of annual report). Accordingly, MGM respectfully requests the Court take judicial notice of the following exhibits:

- **Exhibit 1** is a true and correct copy of an excerpt of MGM’s 2007 Proxy Statement, dated April 20, 2007, which was filed with the SEC on April 23, 2007. The full version of MGM’s 2007 Proxy Statement is available on the SEC’s website, <http://sec.gov/Archives/edgar/data/789570/000095015307000837/p73715def14a.htm>.

- 1 • **Exhibit 2** is a true and correct copy of an excerpt of MGM's 2008 Proxy Statement,
2 dated April 14, 2008, which was filed with the SEC on April 11, 2008. The full
3 version of MGM's 2008 Proxy Statement is available on the SEC's website,
4 <http://sec.gov/Archives/edgar/data/789570/000095015308000697/p75213def14a.htm>.
- 5 • **Exhibit 3** is a true and correct copy of an excerpt of MGM's 2007 Annual Report,
6 which was filed on Form 10-K with the SEC on February 29, 2008. The full version
7 of MGM's 2007 Annual Report is available on the SEC's website,
8 <http://sec.gov/Archives/edgar/data/789570/000095015308000421/p75046e10vk.htm>.
- 9 • **Exhibit 4** is a true and correct copy of a Form 4, filed by Mr. Baldwin with the SEC
10 on February 9, 2005, showing his sale of MGM stock on February 7, 2005.
- 11 • **Exhibit 5** is a true and correct copy of a Form 4, filed by Mr. Baldwin with the SEC
12 on February 9, 2005, showing his sale of MGM stock on February 8, 2005.
- 13 • **Exhibit 6** is a true and correct copy of a Form 4, filed by Mr. Baldwin with the SEC
14 on February 15, 2005, showing his sale of MGM stock on February 11 and 14, 2005.
- 15 • **Exhibit 7** is a true and correct copy of a Form 4, filed by Mr. Baldwin with the SEC
16 on February 17, 2005, showing his sale of MGM stock on February 15 and 16, 2005.

17 MGM further requests the Court take judicial notice of the *absence* of stock sales by the
18 individual Defendants during the Class Period after December 2007. *See* FED. R. EVID. 803(10)
19 (absence of public records or entries admissible). The absence of stock sales by the individual
20 Defendants can be confirmed by reviewing the Form 4s filed for MGM with the SEC, using its
21 EDGAR search tool, <http://www.sec.gov/edgar/searchedgar/companysearch.html>.

22 MGM also seeks judicial notice of the historical prices of its stock, the price of stocks of
23 other companies in the gaming industry, and of the S&P 500. Courts within the Ninth Circuit
24 frequently take judicial notice of historical stock prices, which are facts not subject to reasonable
25 dispute and which can be verified by sources whose accuracy cannot reasonable be questioned,
26 when deciding a securities fraud motion to dismiss. *See Metzler*, 540 F.3d at 1064 n.7 (district
27 court's taking judicial notice of, *inter alia*, stock price history, was proper); *Brodsky v. Yahoo!*
28 *Inc.*, 630 F. Supp. 2d 1104, 1111-12 (N.D. Cal. 2009) (concluding judicial notice of stock prices

1 is appropriate “because historic stock prices are subject to accurate and ready determination by
2 resort to sources whose accuracy cannot reasonably be questioned”); *Patel v. Parnes*, 253 F.R.D.
3 531, 547-48 (C.D. Cal. 2008) (granting request for judicial notice of “the price of publicly traded
4 stocks on particular dates”). Accordingly, MGM respectfully requests the Court take judicial
5 notice of the following exhibits:

- 6 • **Exhibit 8** is a true and correct copy of MGM’s historical stock price information, for
7 the period August 2, 2007 through March 5, 2009, which was retrieved using the
8 “Historical Prices” feature on Yahoo! Finance, <http://finance.yahoo.com>.
- 9 • **Exhibit 9** is a true and correct copy of Ameristar Casinos Inc.’s historical stock price
10 information, on the dates August 2, 2007, January 6-7, 2009, and March 5, 2009,
11 which was retrieved using the “Historical Prices” feature on Yahoo! Finance,
12 <http://finance.yahoo.com>.
- 13 • **Exhibit 10** is a true and correct copy of Boyd Gaming Corp.’s historical stock price
14 information, on the dates August 2, 2007, January 6-7, 2009, and March 5, 2009,
15 which was retrieved using the “Historical Prices” feature on Yahoo! Finance,
16 <http://finance.yahoo.com>.
- 17 • **Exhibit 11** is a true and correct copy of Century Casinos Inc.’s historical stock price
18 information, on the dates August 2, 2007, January 6-7, 2009, and March 5, 2009,
19 which was retrieved using the “Historical Prices” feature on Yahoo! Finance,
20 <http://finance.yahoo.com>.
- 21 • **Exhibit 12** is a true and correct copy of Isle of Capri Casinos, Inc.’s historical stock
22 price information, on the dates August 2, 2007, January 6-7, 2009, and March 5, 2009,
23 which was retrieved using the “Historical Prices” feature on Yahoo! Finance,
24 <http://finance.yahoo.com>.
- 25 • **Exhibit 13** is a true and correct copy of Las Vegas Sands Corp.’s historical stock
26 price information, on the dates August 2, 2007, January 6-7, 2009, and March 5, 2009,
27 which was retrieved using the “Historical Prices” feature on Yahoo! Finance,
28 <http://finance.yahoo.com>.

- 1 • **Exhibit 14** is a true and correct copy of Monarch Casino and Resort Inc.'s historical
2 stock price information, on the dates August 2, 2007, January 6-7, 2009, and March 5,
3 2009, which was retrieved using the "Historical Prices" feature on Yahoo! Finance,
4 <http://finance.yahoo.com>.
- 5 • **Exhibit 15** is a true and correct copy of Melco Crown Entertainment Ltd.'s historical
6 stock price information, on the dates August 2, 2007, January 6-7, 2009, and March 5,
7 2009, which was retrieved using the "Historical Prices" feature on Yahoo! Finance,
8 <http://finance.yahoo.com>.
- 9 • **Exhibit 16** is a true and correct copy of Empire Resorts Inc.'s historical stock price
10 information, on the dates August 2, 2007, January 6-7, 2009, and March 5, 2009,
11 which was retrieved using the "Historical Prices" feature on Yahoo! Finance,
12 <http://finance.yahoo.com>.
- 13 • **Exhibit 17** is a true and correct copy of Penn National Gaming Inc.'s historical stock
14 price information, on the dates August 2, 2007, January 6-7, 2009, and March 5, 2009,
15 which was retrieved using the "Historical Prices" feature on Yahoo! Finance,
16 <http://finance.yahoo.com>.
- 17 • **Exhibit 18** is a true and correct copy of Pinnacle Entertainment Inc.'s historical stock
18 price information, on the dates August 2, 2007, January 6-7, 2009, and March 5, 2009,
19 which was retrieved using the "Historical Prices" feature on Yahoo! Finance,
20 <http://finance.yahoo.com>.
- 21 • **Exhibit 19** is a true and correct copy of Riviera Holdings Corp.'s historical stock
22 price information, on the dates August 2, 2007, January 6-7, 2009, and March 5, 2009,
23 which was retrieved using Bloomberg Law's "Historical Price" feature.¹
- 24 • **Exhibit 20** is a true and correct copy of Wynn Resorts Ltd.'s historical stock price
25 information, on the dates August 2, 2007, January 6-7, 2009 and March 5, 2009,
26

27 ¹ A different source is necessary for Riviera Holding Corp.'s historical stock price because after the Class Period
28 ended, Riviera's stock was de-listed and its historical price information is no longer available through Yahoo!
Finance.

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send e-mail notification of such filing to all registered parties. I further certify that there are no parties on the Manual Service List. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: March 15, 2011

PISANELLI BICE, PLLC
MUNGER, TOLLES & OLSON LLP

By: /s/ George M. Garvey

Attorneys for Defendant
MGM RESORTS INTERNATIONAL